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No. 80-2143

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION, *et al.*,
Respondents.

On Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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MEMORANDUM FOR NORTH CAROLINA UTILITIES COMMISSION

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July 17, 1981

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the Federal Energy Regulatory Commission's determination to allow a natural gas pipeline a return on equity of 14% was adequately supported by an articulated rationale and substantial evidence.

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The cross-petition filed by Transcontinental Gas Pipe Line Corporation in No. 80-2143 seeks review by this Court of a second issue—rate of return—involved in the court of appeals decision in *Public Service Commission* v. *F.E.R.C.*, 642 F.2d 1335; the zone allocation issue in that decision is presently the subject of petitions for certiorari in Nos. 80-1937 (FERC), 80-1938 (North Carolina Utilities Commission), and 80-1939 (North Carolina Natural Gas Co., *et al.*).

The proceeding before the Commission related to Transco's request, under Section 4 of the Natural Gas Act, 15 U.S.C. § 717c, for increased rates for natural gas service for the period February 1 - December 31, 1977.

As part of its filing, Transco requested a rate of return on equity of 17.0%. Although at the hearing Transco's witness conceded that the highest return on equity ever allowed any interstate pipeline in a contested rate case was 13.75%, the Commission's rate-of-return witness testified that 14.0% would be an appropriate return for Transco, and this level was subsequently adopted by the Commission. Both before the Commission and on appeal to the court below, the North Carolina Utilities Commission challenged the 14.0% allowance as excessive on two grounds: first, that, without explanation or justification, it granted Transco a higher return than the highest ever allowed in a decided pipeline rate case; and, second, that it failed to discount the otherwise allowable return to reflect Transco's sharply curtailed level of service during the period in question. In contrast, Transco challenged the 14.0% allowance as inadequate, arguing, *inter alia*, that it was entitled to a 14.75% allowance since that figure had previously been accepted in *uncontested settlements* involving Transco's rates.

The court of appeals, rejecting both challenges to the rate-of-return determination, affirmed the Commission's allowance of 14.0%, and neither the North Carolina Utilities Commission nor Transco petitioned for a writ of certiorari on this point. Transco has, however, filed a cross-petition to the petitions filed by FERC and others on the zone allocation issue.

The North Carolina Utilities Commission respectfully submits that in the event the Court should determine to grant certiorari on the rate-of-return issue, the writ should encompass both halves of the issue that was before the Commission and the court of appeals: viz., whether the Commission's determination to adopt a 14.0% return on equity was justified in light of both Transco's

claim that the 14.0% return was inadequate and North Carolina's claim that it was excessive.

Respectfully submitted,

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